

SENATE BILL 2404

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 6, relative to workers' compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-412, is amended by deleting the section in its entirety and substituting instead the following:

(a) For the purposes of this section, "secure the payment of workers' compensation" means obtaining coverage that meets the requirements of this chapter and title 56.

(b) The administrator shall enforce workers' compensation coverage requirements, including the requirement that an employer secure the payment of workers' compensation, and the requirement that an employer provide a carrier with information to accurately determine payroll and correctly assign classification codes. In addition to any other powers under this chapter, the administrator may:

- (1) Conduct investigations for the purpose of ensuring employer compliance;
- (2) Enter and inspect any place of business at any reasonable time for the purpose of investigating employer compliance;
- (3) Examine and copy business records;
- (4) Administer oaths and affirmations;
- (5) Certify to official acts;
- (6) Issue and serve subpoenas for attendance of witnesses or production of business records, books, papers, correspondence memoranda, and other records;

(7) Issue stop-work orders, penalty assessment orders, and any other orders necessary for the administration of this section;

(8) Enforce the terms of a stop-work order;

(9) Levy and pursue actions to recover penalties; and

(10) Seek injunctions and other appropriate relief.

(c)

(1) An employer fails to secure payment of workers' compensation and is subject to sanctions under this section if the employer:

(A) Materially understates or conceals payroll;

(B) Materially misrepresents or conceals employee duties to avoid proper classification for premium calculations; or

(C) Materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor.

(2) If the administrator issues a stop-work order because an employer fails to secure the payment of workers' compensation, then the stop-work order does not affect the duty of an employer or carrier to provide benefits under this chapter or any right or defense of an employer or carrier under this chapter, including exclusive remedy.

(d) The administrator shall designate a designee who may serve subpoenas and other process issued under this section.

(e) The administrator shall specify by rule the business records that employers must maintain and produce to comply with this section.

(f) If a person refuses to obey a subpoena to appear before the administrator or the administrator's designee, to produce evidence requested by the administrator, or to give testimony about a matter that is under investigation, then the administrator may seek an order requiring compliance with the subpoena in the chancery court of Davidson

County. The chancery court of Davidson County may find a person who refuses to obey an order requiring compliance with a subpoena in contempt. A person who refuses to comply with a subpoena to appear before the administrator or the administrator's designee shall pay any costs, including reasonable attorney's fees, incurred by the administrator in obtaining an order to enforce a subpoena issued under this section.

(g)

(1) The failure of an employer to secure the payment of workers' compensation required by this chapter, or to produce the required business records under subsection (e) within five (5) business days after receipt of a written request from the administrator, constitutes an immediate danger to public health, safety, and welfare sufficient to justify the issuance of a stop-work order requiring the cessation of all business operations to the employer by the administrator. The stop-work order is effective when served on the employer or, for a specific employer worksite, when served at that worksite. A stop-work order particular to a specific worksite may be served by posting a copy of the stop-work order in a conspicuous location at the worksite.

(2) If, after due diligence, an employer cannot be served, then the administrator may execute service by publishing a stop-work order in a news publication having general circulation in the Memphis, Nashville, and Knoxville metropolitan areas.

(3) A stop-work order remains in effect until the administrator determines that the employer is in compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section.

(4) The administrator may issue to an employer an order of conditional release from a stop-work order if the administrator finds that the employer

complies with the coverage requirements of this chapter and the employer agrees to pay any penalty assessed under this section according to a payment schedule. If the administrator issues an order of conditional release and the employer fails to meet any term or condition of a penalty payment agreement or order of conditional release, then the administrator shall immediately reinstate the stop-work order and the entire unpaid balance of the penalty is due immediately.

(5) The administrator may require an employer who fails to comply with the coverage requirements of this chapter to file with the administrator, as a condition of release from a stop-work order, periodic reports for a probationary period no longer than two (2) years demonstrating the employer's continued compliance with this chapter. The administrator shall, by promulgation of rules, specify the reports required and the time for filing under this subdivision (g)(5).

(6) Stop-work orders and penalty assessment orders issued under this section against a corporation, partnership, or sole proprietorship remain in effect against any successor corporation or business entity that has one (1) or more of the same principals or officers as the corporation or partnership against which the stop-work order was issued and are engaged in the same or equivalent trade or activity.

(7) The administrator shall assess a penalty of one thousand dollars (\$1,000) per day against an employer for each day the employer conducts business operations in violation of a stop-work order.

(8) An employer who conducts business operations in violation of a stop-work order commits a Class E felony.

(h) Any subsequent violation of this section within five (5) years of the initial violation of this section constitutes a knowing act, which shall subject the person to additional penalty as determined by the administrator by rule, in addition to the penalties set forth in subsection (f).

(i) The administrator shall adopt rules to administer this section.

(j) The administrator may bring an action in the chancery court of Davidson County to recover penalties assessed under this section, including any interest owed to the administrator pursuant to this chapter. In any action brought by the administrator pursuant to this section in which the administrator prevails, the court may award costs, including the reasonable costs of investigation and reasonable attorney's fees.

(k) Any law enforcement agency in the state may, at the request of the administrator, render any assistance necessary to carry out this section, including, but not limited to, preventing any employee or other person from remaining at a place of employment or job site after a stop-work order or injunction has taken effect.

(l) Agency action by the administrator under this section, if contested, must be contested as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. For purposes of rulemaking, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2020, the public welfare requiring it.